

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.MC.No. 194 of 2007()

CC.1218/2006 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM
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PETITIONER: ACCUSED IN C.C.NO.1218/06.

BOSE V.V., AGED 40 YEARS, S/O. VASUDEVAN
RESIDING AT VATTAVATHIL HOUSE, MEZHUVELI P.O.,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

ADDL2. CHINAR BUILDERS & CONTRACTORS LTD.,
214, PANAMPILLY NAGAR, COCHIN,
PRESENTLY FUNCTIONING AT 2ND FLOOR
MEPPILLIL BUILDING, JANATHA JUNCTION
S.A.ROAD, COCHIN REPRESENTED BY ITS
POWER OF ATTORNEY HOLDER, RAMESH SHENOY
(ADDL.R2 IS IMPEADED AS PER ORDER IN CRL.M.A.NO.1103/2007 DT.12/3/2007]

BY ADV. SRI.T.RAJESH
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 12/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.194 of 2007

Dated this the 12th day of March 2007

O R D E R

The petitioner has come to this court to complain about the action taken against him by the learned Additional Chief Judicial Magistrate, Ernakulam in the proceedings initiated against him.

2. The petitioner initially faced indictment for an offence punishable under Section 138 of the Negotiable Instruments Act. That proceedings was numbered as C.C.No.2032/2001. The matter dragged on from time to time. According to the petitioner, he is entitled to raise all contentions including technical ones to save himself from the penal consequences of his alleged culpable acts. He took up one such defence and it virtually become impossible to even contemplate a conviction against him in the prosecution under Section 138 of the Negotiable Instruments Act. The complainant, when the matter came up for hearing, reported that the complaint was not being pressed. The petitioner was on bail in that case, all along. The said case was accordingly closed as withdrawn by the complainant.

3. According to the petitioner, the complainant resorted to a curious method of filing a fresh private complaint alleging the offences punishable under Sections 420 and 465 I.P.C. It is the case of the petitioner that the learned Magistrate directed the petitioner to wait in the court after the disposal of the first case. In the meantime, with alleged unholy haste, the fresh complaint of the complainant was entertained by the learned Magistrate and a warrant of arrest was issued against the petitioner and the petitioner was apprehended from the premises of the court where he was directed to wait. He was detained in custody and remanded to prison. He was released on bail on a later date. On a subsequent day, when the petitioner was absent, warrant was issued against the petitioner again. According to the petitioner, issue of the warrant was most unjustified. He, therefore, came to this court with this Criminal Miscellaneous Case . The Criminal Miscellaneous Case was admitted and directions were issued on 24/01/2007 staying the proceedings. But, inspite of the order of stay, the petitioner was put to further harassment by the police by making the arrest. The learned Magistrate, even after the order of stay was communicated, did not allegedly take steps to withdraw the

warrant issued. In these circumstances, the petitioner was constrained to approach this court again with a further prayer to secure his release. Thereafter, when the petitioner was produced before the learned Magistrate, he was released from custody. The petitioner complains about the improper course resorted to by the learned Magistrate under which he was compelled to remain in custody unnecessarily. He was allegedly vexed and harassed by subsequent issue of a non-bailable warrant unnecessarily against him.

4. I have called for the report of the learned Magistrate. The learned Magistrate explains that he was compelled to act in aid of justice, in the peculiar facts and circumstances of this case, to direct arrest of the petitioner who was already in court.

5. I shall not embark on a detailed discussion. I must say that I am totally dissatisfied with the course adopted by the learned Magistrate. Justice must not only be done but it must appear to be done also. The accused was contesting the proceedings for a long period of time. He was on bail. On one day when the complainant withdrew the complaint, on the same allegations, another complaint was filed. The learned Magistrate compelled the petitioner to remain in custody on the basis of the

allegations made in the fresh complaint. To say the least, the course adopted by the learned Magistrate was not just, fair and proper.

6. No further relief remains to be granted in the matter, as cognizance has already been taken and the petitioner has already been released on bail subsequently, as per the order of this court. But I am satisfied that there is merit in the grievance of the petitioner that he is left with the feeling that justice had been denied to him at the hands of the learned Magistrate. Though in this Criminal Miscellaneous Case, there is no specific prayer for transfer of the case, I am satisfied in the facts and circumstances of this case that this is a fit case where this court must, even without an application for transfer, issue appropriate directions to allay the apprehension of the petitioner. Notice has been given to the complainant and he has entered appearance through counsel before me. He has also been heard. I am satisfied that the relief of transfer made orally, of which notice has been given to the respondent and arguments heard, can be granted.

7. In the result,

(i) This Criminal Miscellaneous Case is allowed in part.

(ii) C.C.No.1218/2006 pending before the Addl.C.J.M, Ernakulam is transferred to the court of the C.J.M, Ernakulam. The learned Addl.C.J.M, Ernakulam shall forthwith transfer records to the learned Chief Judicial Magistrate, Ernakulam. Parties shall appear before the learned C.J.M, Ernakulam on 30/03/2007 without waiting for any further directions.

(iii) Bond executed by the accused shall continue to remain in force and it shall not be necessary to insist on execution of a fresh bond for the mere reason that transfer has been directed by this court.

(R.BASANT, JUDGE)

jsr

This order was not signed by this court though dictated on 08/03/2007 as the impleadment application was not seen filed. It was posted to be spoken to. Called again on 12/03/2007 as spoken to. Impleading petition allowed and order signed as per order in Crl.M.A.No.1103 of 2007 dated 12/03/2007.

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006